IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3667 OF 2007

Shri Laxman R. Kshirsagar. ..Petitioner.

V/s.

Shri Shivajirao R.Kshirsagar. ..Respondent.

Mr.A.K.Suryawanshi for petitioner.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 4, 2007.

P.C. :

1. It is seen that the request for time to file Written Statement was considered by the trial Judge for the first time on 31st January, 2006, when following order came to be passed.

"ORDER

> No say filed. Hence considering this prof. application is allowed subject to payment of costs of Rs.300/- to the Government on or before next date."

The trial Judge then passed order on 20th February, 2006, which reads thus:

> "The defendant not deposited the costs as per order. Hence this application is rejected."

The above said orders were passed on the application preferred on behalf of the petitioner/defendant being Exh. 16, which discloses the ground that the defendant was unaware of filing of Written Statement within 90 days. Subsequently, another application was filed on behalf of the defendant which was numbered as Exh.30. Once again request was made to the trial Court for granting time to file Written Statement. The Court passed following order on 20th February, 2006, which reads thus:

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> As already order below Exh.16 is passed this application u/s.148 is not tenable. before passing the order below Exh.16 the concerned advocate appeared. Hence it can not be said that the advocate or the defendant gave no knowledge. Hence this application is rejected."

The earlier order has not been challenged by the petitioner/ defendant. Instead, fresh application came to be filed on behalf of the petitioner once again, more or less reiterating the same grounds, which were urged in the earlier application. Besides, it is now contended that due to mistake of the earlier advocate Written Statement could not be filed in time.

2. The fact remains that the first order

refusing request of the petitioner has not been challenged. Besides, the ground set up in the present application has been rightly negatived by the trial Judge in his order, which is impugned in the present petition dated 20th April, 2006. Significantly, this order is challenged for the first time by way of present Writ Petition instituted before this Court on 22nd January, 2007.

3. These circumstances leave no manner of doubt that the entire effort of the petitioner/defendant was to protract the proceeding. Indeed, the attempt was made on behalf of the petitioner to persuade the trial Judge to exercise powers under section 151 of the Code. The trial Court has rightly observed that when there is express provision in the Code, it is not open to the Civil Court to exercise inherent jurisdiction under section 151 of the Code. That view is unassailable. Taking any view of the matter, there is no merits in this petition. Hence dismissed.

4. In my view, such petition should be dismissed with exemplary costs, so that unscrupulous litigants will feel discouraged in protracting the proceeding in the manner, which has been done in this

proceeding. However, the defendant has obviously done so on legal advice, for which reason, I refrain myself from making any more comments.